

ELKHART COUNTY RECORDER  
JENNIFER L. DORIOT  
FILED FOR RECORD ON  
12/23/2019 04:34 PM  
AS PRESENTED

# AFFIDAVIT FOR RECORDING OF AN ENVIRONMENTAL RESTRICTIVE COVENANT

I, the undersigned, being the age of majority and duly sworn upon my oath, on behalf of Giada Holdings, LLC, hereby consent to the enclosed copy of the Environmental Restrictive Covenant and its Attachments (the "Covenant") being recorded by the Performing Settling Defendants (as such term is defined in the "Consent Decree" as referenced in the Covenant) in the Elkhart County Recorder's Office and cross-referenced to the Quitclaim Deed recorded on November 1, 2018, as Deed Record 2018-22693, which are the recorded deeds/documents that concern the property subject to the land/water use requirements contained in the Covenant. The enclosed copy represents the Covenant and its Attachments in their entirety as approved by the Indiana Department of Environmental Management and the property owner.

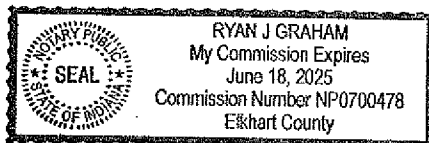
[Signature]  
Printed Name: Cory White  
Title: Member, Giada Holdings LLC  
Member, Giada Holdings, LLC

12/18/19  
Date

STATE OF IN )  
COUNTY OF Elkhart ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared CORY WHITE, MEMBER, of Giada Holdings, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing instrument for and on behalf of the property owner.

Witness my hand and Notarial Seal this 18 day of DEC, 2019.



[Signature]  
Printed Name: \_\_\_\_\_ Notary Public  
Residing in: \_\_\_\_\_

My Commission Expires:

County Recorder's Book and Page or Instrument Number: \_\_\_\_\_

Number of Pages Recorded: \_\_\_\_\_

## ENVIRONMENTAL RESTRICTIVE COVENANT

THIS ENVIRONMENTAL RESTRICTIVE COVENANT (the "Covenant") is made this 18<sup>th</sup> day of December, 2019, by Giada Holdings, LLC, an Indiana limited liability company (together with its successors and assignees, collectively "Owner").

### Recitals

WHEREAS, Owner owns certain real estate in Elkhart County, Indiana, which is more particularly described in attached Exhibit A and made a part hereof, which was acquired by Quitclaim Deed on November 1, 2018, and recorded on November 1, 2018, as Deed Record 2018-22693, all in the Office of the Recorder of Elkhart County, Indiana ("Real Estate").

WHEREAS, the Real Estate is part of the Himco Dump Superfund Site depicted in the attached Exhibit B, which encompasses approximately sixty (60) acres of low-lying marshland in Elkhart County, Indiana (the "Himco Site").

WHEREAS, the Himco Site was placed on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, and the United States Environmental Protection Agency ("EPA"), in concert with the Indiana Department of Environmental Management ("IDEM"), and the "Performing Settling Defendants" (as such term is defined in the "Consent Decree" set forth below) proposed that potentially responsible parties implement activities (the "Remedial Action") embodied in a final Record of Decision, executed on September 23, 1993, and amended on September 15, 2004, and as may be further amended from time to time ("ROD").

WHEREAS, the Remedial Action selected by the ROD, and the work to be performed by certain performing defendants, constitutes a responsive action taken or ordered by the President of the United States, and is set forth under the terms and conditions of the Himco CERCLA RD/RA Consent Decree ("Consent Decree"), having been entered by the United States District Court for the Northern District of Indiana, in cause of action *United States of America v. Bayer HealthCare LLC, et al.*, docket number 2:07cv304(TS).

WHEREAS, the remedial design and Remedial Action required by the Consent Decree, was prepared and implemented in accordance with the requirements of the ROD, the Consent Decree and applicable Indiana laws as a result of a release or the substantial threat of a release of hazardous substances (collectively, "contaminants of concern") relating to the Himco Site which affected the Real Estate. The Performing Settling Defendants, pursuant to the Consent Decree, implemented certain response activities at the Real Estate, including the following: (a) monitoring of the "Work" (as such term is defined in the Consent Decree); (b) verifying data or information submitted to the EPA or IDEM; (c) conducting investigations relating to contaminants of concern at or near the Himco Site; (d) sampling, assessing the need for, planning or implementing additional response actions at or near the Site; (e) assessing implementation of construction quality assurance and quality control practices as defined in the approved construction Quality Assurance Project Plans; (f) implementing the Work; (g)

inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Settling Defendants or their agents, consistent with Section XXIV of the Consent Decree; assessing Settling Defendants' compliance with the Consent Decree; and determining whether the Himco Site, the Real Estate or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

WHEREAS, the remedial design and Remedial Action, pursuant to the Consent Decree, as approved by EPA and IDEM, provides that contaminants of concern will remain in the groundwater and/or in the soil of the Himco Site and/or the Real Estate, and requires that land use restrictions be maintained to prevent future use of the groundwater and to prevent the future use of the land for residential purposes to ensure the protection of public health, safety or welfare, and the environment. A list of the contaminants of concern are set forth in Table 1, attached hereto. The remedial design and Remedial Action, as outlined pursuant to the Consent Decree, and related site documents are incorporated herein by reference and may be examined at the offices of EPA or IDEM, in the public file. IDEM's offices are located at 100 N. Senate Avenue, Indianapolis, IN and may be available through the IDEM's Virtual File Cabinet system which, at the time of the execution of this document, can be found at [www.IN.gov/idem](http://www.IN.gov/idem).

NOW, THEREFORE, Owner, hereby, in consideration for the promises contained herein, and other good and valuable consideration, imposes restrictions on the Real Estate and covenants and agrees that:

#### I. GENERAL PROVISIONS

1. Property Conveyance -- Continuance of Provisions. The Owner shall prevent any conveyance of title, easement or other interest in the Real Estate from being consummated without adequate and complete provision for compliance with the Consent Decree and prevention of exposure to contaminants of concern as described herein.

Access for IDEM and EPA. The Owner hereby provides the right of access to IDEM and to EPA and to their designated representatives (including Performing Settling Defendants, as necessary) to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and with the effectiveness of the Remedial Action. This right includes, but is not limited to, access for the purposes of:

- a) Carrying out and maintaining the Remedial Action (and the terms of the Consent Decree, if applicable);
- b) Monitoring the Remedial Action;
- c) Monitoring compliance with the ROD and the terms of the Consent Decree;
- d) Monitoring compliance with this Covenant;
- e) Determining whether the restrictions described in paragraphs 7(a) to 7(f) above are being maintained (and operated, if applicable) in a manner that ensures the protection of public health, safety or welfare and the environment;

- f) Verifying that no action is being taken on the Real Estate in violation of the terms of this Covenant or of any federal or state environmental laws or regulations;
- g) Conducting periodic reviews of the Remedial Action, including but not limited to, reviews required by applicable statutes and regulations; and
- h) Implementing additional or new response actions that EPA or the IDEM determine are necessary to protect public health or the environment because: (i) either the original Remedial Action has proven to be ineffective, or (ii) new technology has been developed which will accomplish the purposes of the Remedial Action in a significantly more efficient or cost effective manner and will not impose any significantly greater burden on the Real Estate or unduly interfere with the then existing uses of the Real Estate.

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees, licensees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests or persons acting under the direction or control and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and terms of this Covenant.

4. Written Notice of the Presence of Hazardous Substances. Owner agrees to include in any instrument conveying an interest in any portion of the Real Estate, including, but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED \_\_\_\_\_, 2019, RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA ON \_\_\_\_\_, 2019, INSTRUMENT NUMBER (or other identifying reference) \_\_\_\_\_ IN FAVOR OF AND ENFORCEABLE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND/OR THE PERFORMING SETTLING DEFENDANTS, AS SUCH PARTIES ARE DEFINED IN THAT CERTAIN CONSENT DECREE ENTERED BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA, IN CAUSE OF ACTION UNITED STATES OF AMERICA V. BAYER HEALTHCARE LLC, et al., DOCKET NUMBER 2:07 cv 304 (TS).**

5. Notice to EPA, IDEM and Performing Settling Defendants of the Conveyance of Property. Owner agrees to provide notice to EPA, IDEM and Performing Settling Defendants, no later than thirty (30) days after any conveyance of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide EPA, IDEM and Performing Settling Defendants with a certified copy of the instrument conveying any interest in any portion of the Real Estate and, if it has been recorded, its recording reference. Such notice shall also include the name and address of the transferee.

6. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to the laws of the State of Indiana.

## II. RESTRICTIONS AND OBLIGATIONS

7. The Owner shall:

- (a) Prohibit any activity at the Himco Site that may interfere with any component of the remedy or activities pursuant to the Consent Decree, long-term monitoring or measuring necessary to assure the effectiveness and integrity of any response action, selected or undertaken at the Himco Site.
- (b) Not use the Himco Site for residential purposes, including, but not limited to daily care facilities (e.g. daycare centers, schools and senior citizen facilities), and shall limit the reuse to industrial, recreational, or commercial.
- (c) Neither engage in nor allow the installation or use of private drinking water wells on the Real Estate. There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate that could cause exposure of humans or animals to the ground water underlying the Real Estate, other than for site investigation and/or remediation purposes, without prior EPA and/or IDEM approval.
- (d) Neither engage in nor allow the digging or drilling into or the excavation of soil anywhere on the Himco Site as depicted on Exhibit B without first receiving written approval by the EPA and/or IDEM at least thirty (30) days prior to the commencement of such work. Any removal, excavation or disturbance of soil from within the affected areas of the Himco Site must be conducted in accordance with all requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Himco Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- (e) Arrange for a future land use feasibility study to be conducted by any

entity responsible for the redevelopment of the Real Estate (to determine the Real Estate's suitability for a particular reuse scenario via an evaluation by the EPA in consultation with IDEM);

- (f) At the completion of remediation, Owner shall modify this Covenant, if EPA and/or IDEM determines that additional land use restrictions are necessary to be protective of human health and the environment as a result of residual contamination that will remain on the Real Estate.

### III. ENFORCEMENT

8. Enforcement. EPA, IDEM, the representatives thereof, Performing Settling Defendants and/or other appropriate grantees shall have the right to enforce this Covenant, the restrictions listed in Paragraph 26(b) of the Consent Decree, or other restrictions that EPA and/or IDEM determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to the Consent Decree. Further, pursuant to IC 13-14-2-6(5), IDEM may proceed in court, by appropriate action, to enforce this Covenant. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until EPA and IDEM determine that the contaminants of concern no longer present an unacceptable risk to the public health, safety or welfare or to the environment.

10. Amendment, Modification and Termination. This Covenant shall not be amended, modified or terminated except by written instrument executed among EPA, IDEM, Performing Settling Defendants and Owner at the time of the proposed amendment, modification or termination. Within five (5) days of executing an amendment, modification or termination of the Covenant, such amendment, modification or termination shall be recorded with the Office of the Recorder of Elkhart County, Indiana and within five (5) days after recording, a true copy of the recorded amendment, modification or termination shall be presented to EPA, IDEM and Performing Settling Defendants.

### V. MISCELLANEOUS

11. Waiver. No failure on the part of EPA, IDEM or Performing Settling Defendants at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect EPA's, IDEM's or Performing Settling Defendants' right to enforce such term, and no waiver on the part of EPA, IDEM or Performing Settling Defendants of any term shall be taken or held to be a waiver of any other term hereof or the breach thereof.

12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.

13. Changes in Law or Regulation. In the event of any change in applicable laws or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 7 above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, guidelines, or policies for environmental restrictive covenants or institutional or engineering controls change as to form or content. All statutory references include successor provisions.

14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the others pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:

Giada Holdings, LLC

c/o Cory White

~~Realty Group Resources~~ *not associated with Property*

215 Prairie St

Elkhart, IN, 46516

cwhiterealtor@hotmail.com

To EPA:

U.S. Environmental Protection Agency

Superfund Division

Region 5

77 West Jackson Boulevard

Chicago, Illinois 60604

To IDEM:

Indiana Department of Environmental Management

Office of Enforcement

100 North Senate Avenue, MC 60-02

Indianapolis, Indiana 46204-2251

To Performing Settling Defendants:

c/o Bayer HealthCare LLC

Law, Patents and Compliance

100 Bayer Blvd

Whippany, NJ 07981

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

16. Authority to Execute and Record. The undersigned person executing this Covenant on behalf of the Owner represents and certifies that he or she is duly authorized and has been fully empowered to execute, record and deliver this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

*[Signatures on the following pages.]*



IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Covenant to be executed on this 18th day of December, 2019.

Giada Holdings, LLC

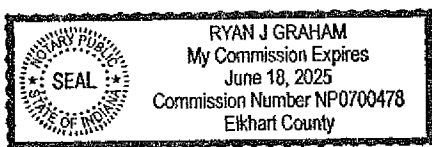
By: [Signature]  
Its: member

"Owner"

STATE OF IN )  
 ) SS:  
COUNTY OF ELKHART )

On this, the 18th day of DECEMBER, 2019, before me, CORY WHITE, the MEMBER for Giada Holdings, LLC, an Indiana corporation, Owner of the Real Estate more fully described therein, appeared and acknowledged himself to be authorized to execute the foregoing instrument on behalf of Giada Holdings, LLC for the purposes contained herein, and did so execute such instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date above written.



[Signature]  
Printed Name:  
Notary Public  
County of Residence:  
My commission expires:

THIS INSTRUMENT PREPARED BY Stephen A. Studer, Attorney at Law, Krieg DeVault LLP, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Stephen A. Studer, Attorney at Law, Krieg DeVault LLP, 4101 Edison Lakes Parkway, Suite 100, Mishawaka, Indiana 46545.

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF REAL ESTATE**

All those certain pieces, or parcels of land, located in the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section Thirty-Six (36), Township Thirty-Eight (38) North, Range Four (4) East, excepting therefrom all those certain pieces, or parcels of land, comprising the right of way and property of The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, containing One and Thirty-Eight Hundredths (1.38) acres, more or less.

CONTAINING 38.67 acres of land.

Tax Identification Number: 20-01-36-201-001.000-005

Property Address: 0 County Road 10, Elkhart, Indiana

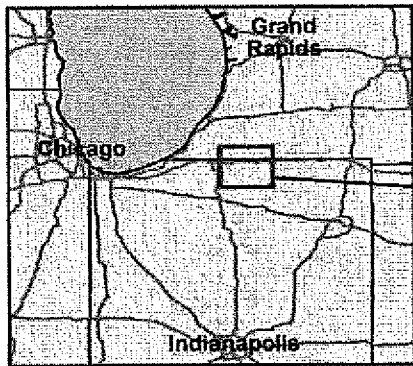
# Site Location

Superfund  
U.S. Environmental Protection Agency

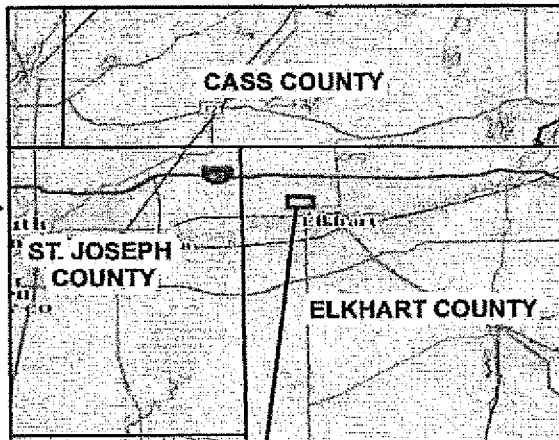


## Himco Dump Elkhart County, IN

EPA ID #IND980500292



State



County



### Legend

Property Boundary



Figure 1

Site

Produced by D.Rebot  
U.S. EPA Region 5 on October 1, 2015  
Image Source: Bing Basemaps

EPA Disclaimer: Please be advised that areas depicted in the map have been estimated based on parcel data.



**TABLE 1**

**LIST OF CHEMICALS OF CONCERN AND CONCENTRATION LEVELS/DETECTED  
PARAMETERS**

<p align="center"><b>Southern Downgradient Ground Water</b></p> <p align="center"><b>Basis:</b> well pair: WT116A/WT119A (1990-2000)</p>	<p align="center"><b>Eastern Downgradient Ground Water</b></p> <p align="center"><b>Basis:</b> WT101A, WT114A, WT114B, GP16 (all depths), GP101 (all depths), GP114 (all depths)</p>	<p align="center"><b>Eastern Residential Wells</b></p> <p align="center"><b>Basis:</b> Individual Residential Wells</p>
<i>Carcinogens</i>	<i>Carcinogens</i>	<i>Carcinogens</i>
arsenic benzene bis(2-ethylhexyl)phthalate carbazole 1,2-DCP vinyl chloride	arsenic benzene bis(2-ethylhexyl)phthalate 1,2-DCP	arsenic benzene chloroform 1,2-DCA (EDC) 1,2-DCP vinyl chloride
<i>Noncarcinogens</i>	<i>Noncarcinogens</i>	<i>Noncarcinogens</i>
antimony iron manganese sodium thallium	chromium iron manganese sodium thallium	calcium iron manganese sodium sulfate 1,1-DCA cis-1,2-DCE